

ORIGINAL

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FILED IN THE
UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

MAR 09 2006
at 2 o'clock and 4 min. PM
SUE BEITIA, CLERK

Attorneys for Defendants
WILLIAM P. BADUA,
JEFFREY OMAI and
SPENCER ANDERSON

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

OFELIA COLOYAN,) CIVIL NO. CV03-476 KSC
)
Plaintiff,) STIPULATION REGARDING JOINT
) REQUESTED JURY
vs.) INSTRUCTIONS; JOINT JURY
) INSTRUCTIONS NOS. 1-6
WILLIAM P. BADUA;)
JEFFREY OMAI;)
SPENCER ANDERSON;)
NEIL PANG;)
and DOES 5-10,)
)
Defendants.) TRIAL DATE: WEEK OF
) MARCH 14, 2006
)

STIPULATION REGARDING JOINT REQUESTED JURY INSTRUCTIONS

Defendants WILLIAM P. BADUA, JEFFREY OMAI and SPENCER ANDERSON (collectively hereinafter “Defendants”), by and through their attorneys, Carrie K.S. Okinaga, Corporation Counsel, and Kendra K. Kawai and Marie Manuele Gavigan, Deputies Corporation Counsel, and Plaintiff OFELIA COLOYAN (“Plaintiff”), by and through her attorneys, Jack Schweigert, Esq., Rory Soares Toomey, Esq. and Arthur Ross, Esq. hereby stipulate and agree to the following jury instructions:

A. General Federal Jury Instructions in Civil Cases of the United States Magistrate Judges, District of Hawaii, Jury Instruction Nos. 1.2 and 3.1.

B. Joint Proposed Jury Instructions Nos. 1- 6, attached hereto.

C. On March 2, 2006, Plaintiff filed her proposed jury instructions in this case. Plaintiff agrees to withdraw the following proposed jury instructions: Nos. 2, 3 and 5.

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The parties reserve the right to request and submit additional jury instructions which could not be submitted jointly.

DATED: Honolulu, Hawaii, March 9, 2006.

CARRIE K.S. OKINAGA
Corporation Counsel

By: Kendra K. Kawai
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OFELIA COLOYAN

CIVIL NO. CV03-00476 KSC, OFELIA COLOYAN v.
WILLIAM P. BADUA et al.; *STIPULATION REGARDING JOINT REQUESTED*
JURY INSTRUCTIONS

JOINT PROPOSED JURY INSTRUCTION NO. 1

Each defendant in this case has separate and distinct rights. You must decide the case of each defendant separately, as if it were a separate lawsuit. Unless I tell you otherwise, these instructions apply to all of the defendants.

JOINT PROPOSED JURY INSTRUCTION NO. 2

Plaintiff is not required to present evidence of the monetary value of her emotional distress. It is only necessary that plaintiff prove the nature, extent and effect of her emotional distress. It is for you, the jury, to determine the monetary value of such emotional distress using your own judgment, common sense and experience.

JOINT PROPOSED JURY INSTRUCTION NO. 3

Compensation must be reasonable. You may award only such damages as will fairly and reasonably compensate plaintiff for the injuries or damages legally caused by defendants' conduct.

You are not permitted to award a party speculative damages, which means compensation for loss or harm which, although possible, is conjectural or not reasonably probable.

JOINT PROPOSED JURY INSTRUCTION NO. 4

Acts are done under color of law when a person acts or purports to act in the performance of official duties under any state, county, or municipal law, ordinance, or regulation.

JOINT PROPOSED JURY INSTRUCTION NO. 5

Plaintiff may not recover damages for any emotional distress related to the litigation of this case.

Clark v. United States, 660 F.Supp. 1164 (W.D. Wash.1987), affirmed, 856 F.2d 1433 (9th Cir. 1988); See also, Picogna v. Board of Ed., 143 N.J. 391, 398, 671 A.2d 1035, 1038 (1996) (“[State] courts are virtually unanimous in holding that litigation-induced stress is not recoverable as a separate component of damages.” “Similarly, federal court decisions are unanimous in holding that litigation-induced stress may not be recovered as damages.”)

JOINT PROPOSED JURY INSTRUCTION NO. 6

A search is reasonable, and a search warrant is not required, if a person in lawful possession of the area knowingly and voluntarily consents to the search.

Ninth Circuit Model Civil Jury Instruction 11.7.